

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CRM M-37940 of 2016

Date of Decision: January 9, 2017

Pankaj Ganda

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Sunil Sihag, Advocate  
for the petitioner.

Mr. C.S. Bakshi, Addl.A.G., Haryana.

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**M.M.S. BEDI, J.**

Petitioner seeks the concession of regular bail by invoking the inherent jurisdiction of this Court read with provisions of Section 439 and Section 167 (2) Cr.P.C. in case FIR No. 279 dated October 5, 2015 under Sections 420, 465, 467, 468, 471, 409 IPC and Sections 7/13 of the Prevention of Corruption Act, registered at Police Station Kalanwali, District Sirsa.

It is not disputed that the petitioner is involved in a large number of cases including FIR No. 332 dated December 1, 2015 under

Sections 409, 406, 420, 467, 468, 471, 218, 506 IPC and Section 13 of the Prevention of Corruption Act, registered at same Police Station Kalanwali and another FIR No. 276 dated October 3, 2015 under Sections 420, 406, 467, 471, 218 IPC and Sections 7/13 of the Prevention of Corruption Act registered at Police Station Kalanwali.

The petitioner claims that he had surrendered in all the three cases on July 1, 2016. Period of 90 days expired on September 29, 2016. The challan had been presented on October 1, 2016. The petitioner filed applications under Section 167 (2) Cr.P.C. in the above said three cases. He was released on bail in FIR No. 276 dated October 3, 2015, on October 6, 2016 on the ground that challan had been presented on October 1, 2016 i.e. after the expiry of stipulated period of 90 days. Petitioner was also released under Section 167 (2) Cr.P.C., on bail, in FIR No. 332 dated December 1, 2015 on October 6, 2016 observing that the challan had been filed on October 3, 2016 after expiry of stipulated period of 90 days but his application under Section 167 (2) Cr.P.C. has been dismissed in FIR No. 279 dated October 5, 2015 vide order dated October 7, 2016. While dismissing the application under Section 167 (2) Cr.P.C., the learned Additional Sessions Judge observed that the petitioner had been arrested in FIR No. 279 of 2015 on July 4, 2016 and not on July 1, 2016.

The main grievance of the petitioner is that there was no occasion for him to surrender in two criminal cases on July 1, 2016 and on July 4, 2016 in the third case.

The short controversy which is required to be determined in the present case is whether the petitioner can be granted the concession of bail under Section 167 (2) Cr.P.C. considering the petitioner to be in custody w.e.f. July 1, 2016. The observation of the trial Court while dismissing the application under Section 167 (2) Cr.P.C. is as follows:-

“10. However, this contention raised on behalf of accused, cannot be accepted being devoid of any merit because the case file of present FIR, was never taken up on 01.07.2016, neither on the request of accused-petitioner nor on the application of investigating agency, and so, it cannot be said that the accused-petitioner is in custody in this case since 01.07.2016. The custody of the accused-petitioner cannot be considered from 01.07.2016 in the present case, merely on the basis of jail warrant when there is no order of concerned Magistrate, passed on 01.07.2016 for taking him into custody. Rather, as per order dated 04.07.2016, file was taken up on that very day on moving bail-cum-surrender application on behalf of accused-petitioner. As the accused-petitioner is in custody in this case since 04.07.2016 and the challan has been filed on 01.10.2016 i.e. within stipulated period of 90 days. With these facts and circumstances, no ground is made out to admit the claim of the accused-petitioner and

to release him on regular bail. Hence, the bail application stands rejected. Papers be tagged with the main file.”

Taking into consideration the nature of the controversy, a report was called for, from the Illaqa Magistrate, Dabwali, Sirsa regarding the date on which the petitioner had surrendered in FIR No. 279 dated October 5, 2015 and the judicial order which was passed in the said application. A report has been received to the effect that the petitioner and his three co-accused could not be arrested as such proceedings under Sections 82/83 Cr.P.C. had been initiated against them by Illaqa Magistrate vide order dated June 3, 2016 to secure their presence. The serving official was directed to appear in the Court for making his statement on July 4, 2016 and the case was fixed for appearance of the accused on August 6, 2016. On July 4, 2016, following order was passed by Judicial Magistrate Ist Class, Dabwali:-

“Present:- Shri A.S. Malik, APP for the State.

Accused Pankaj Ganda in custody represented by

Shri R.S. Mehta, Advocate

Accused Janta Singh in custody represented by

Shri Radhey Sham, Advocate.

File taken up today as bail-cum-surrender application moved on behalf of accused Pankaj Ganda and Janta Singh. At this stage, an application for joining the accused persons in investigation has been moved by DSP Satyapal Singh. The investigating officer is directed to produce the accused persons after some time and after joining them in the investigation.”

It is further reported that on the same day, the following order had been passed by the Magistrate:-

“Present:- Shri A.S. Malik, APP for the State.

Accused Pankaj Ganda in custody represented by  
Shri R.S. Mehta, Advocate

Accused Janta Singh in custody represented by  
Shri Radhey Sham, Advocate.

Accused Pankaj Ganda and Janta Singh have been produced before the undersigned after their joining investigation. A seven days police remand application has been moved by the investigation officer against the accused persons Pankaj Ganda and Janta Singh. The investigation officer stated before the Court that both the accused persons have suffered disclosure statements at the time of joining investigation. As per the said disclosure statements, recovery of the cash amount involved in the present case has to be recovered from the accused persons from Gurgaon, Haryana and Ganganagar, Rajasthan. Moreover, co-accused Vinod Kumar has to be arrested after conducting raids at Shimla. Moreover, police remand is required for further interrogation from both the accused persons. Moreover, both of them have been named in the departmental inquiry conducted by the Nigam concerned. Moreover, both the accused have not cooperated with the

investigation authority. The anticipatory bail application of the accused Pankaj Ganda has been rejected even upto the level of the Hon'ble Supreme Court of India. Moreover, the anticipatory bail of the accused Janta Singh has been rejected by the Hon'ble Punjab and Haryana High Court. Hence, both the accused persons be remanded to police custody.

Learned counsel for the accused Pankaj Ganda argued before the Court that no purpose will be served by giving the police remand of the accused as he has been wrongly implicated in the present case. Moreover, he has argued before the Court that the disclosure statements taken from the accused persons at the time of joining investigation are result of force and compulsion and therefore, have no meaning. He further argued that accused Pankaj Ganda has no role to play in the commission of offence rather the entire blame should be given to the junior engineers involved and the ministerial staff.

Learned counsel for the accused Janta Singh argued before the Court that present FIR No. 279 dated 5.10.2015 did not carry the name of the accused Janta Singh at the first place rather he was added later on.

Moreover, the accused Janta Singh has nothing to do with the alleged offence rather he was following the orders of his senior including SDO Pankaj Ganda.

The disclosure statements suffered by both the accused persons have been perused and signed by the undersigned. According to them, recovery of the alleged amount has to be recovered from Gurgaon, Haryana and Ganganagar, Rajasthan. Moreover, the accused Vinod Kumar has to be arrested from Shimla, Himachal after conducting raids. Moreover, the police remand is required for further investigation in the present case. The zimni order has also been seen and signed by the undersigned.

In view of the above circumstances, this Court is of the considered opinion that five days police remand will suffice in the present case. The custody of both the accused is handed over to the investigating officer for five days and he is directed to produce both the accused before the Court on 9.7.2016. The investigating officer is further directed to get both the accused medically examined before producing them before the Court on 9.7.2016. He is further directed to get their signatures as mark of presence in the general diary maintained by the

local police station concerned of Gurgaon, Ganganagar and Shimla, whenever, they are taken to that places, and to produce attested copies of the said general diary entries in the Court on 9.7.2016.

Moreover, the statement of the serving constable regarding the publication of the proclamation under Section 82 of Cr.P.C. regarding accused Vinod Kumar and Sunil Kumar have not been recorded today. The same be also recorded on 9.7.2016. A copy of this order be sent to Ld. CJM, Sirsa immediately.”

So far as the status of the arrest and surrender in other two case i.e. FIR Nos. 332 and 376 are concerned, the report has been submitted to the effect that petitioner Pankaj Ganda and his co-accused Janta Singh surrendered before the Court of Judicial Magistrate Ist Class, Dabwali on July 1, 2016. He passed the following order:-

“Today case was fixed for appearance of the accused persons upon the proclamation issued against them under Section 82 of Cr.P.C. The accused Pankaj Ganda and Janta Singh have surrendered before the Court. The investigating officer as well as SHO concerned were informed regarding the fact that both the accused persons have surrendered before the court and they should be joined in investigation. But, the SHO

concerned refused to join them in investigation today stating that the DSP concerned is on leave and the accused will be joined in investigation only when the DSP concerned will be back on duty. No bail application has been moved on behalf of accused persons. Vide order dated 15.6.2016, the revision petition has been disposed of as withdrawn of the accused Pankaj Ganda, by the court of Shri Jarnail Singh, Ld. ADJ, Sirsa. Hence, proceedings are not stayed in the present FIR now. Hence, the accused persons are committed to judicial custody and be produced before the Court on 4.7.2016.”

On July 4, 2016, learned Judicial Magistrate Ist Class, Dabwali has passed the following order in FIR No. 332 and 276 of 2015:-

“Both the accused persons have been produced before the undersigned from judicial custody. No application to join both the accused persons in investigation has been moved by the investigating Officer. No bail application has been moved. Hence, both the accused persons are again remanded to the judicial custody and be produced before the Court on 18.7.2016.”

It is also worthwhile to mention here that the present petitioner Pankaj Ganda and other accused persons are also involved in several FIRs and almost on similar allegations. The details of such FIRs is as follows:-

- i) No 86 dated 10.4.2015 under Sections 420, 34 IPC.
- ii) No. 281 dated 15.7.2015 under Sections 420, 218, 467, 468, 471, 506, 34 IPC.
- iii) No. 276 dated 3.10.2015 under Sections 420, 218, 467, 468, 471, 506, 34 IPC.
- iv) No. 332 dated 1.12.2015 under Sections 420, 218, 467, 468, 471, 506, 34 IPC.
- v) No. 79 dated 28.3.2016 under Sections 406, 420, 467, 468, 471, 506 and 120 IPC.
- vi) No. 177 dated 5.5.2016 under Sections 406, 420, 467, 468, 471, 506 and 120 IPC.
- vii) No. 279 dated 4.10.2016 under Sections 120-B, 218, 406, 420, 467, 468, 471, IPC.
- viii) No. 280 dated 4.10.2016 under Sections 120-B, 218, 406, 420, 467, 468, 471, IPC.
- ix) No. 281 dated 4.10.2016 under Sections 120-B, 218, 406, 420, 467, 468, 471, IPC.
- x) No. 310 dated 3.12.2016 under Sections 120-B, 218, 406, 420, 467, 468, 471, IPC.

A perusal of the above said report indicates that the petitioner is an accused in about 10 criminal cases of similar nature.

On July 1, 2016, the petitioner was required to be arrested in three criminal cases. The petitioner has placed on record an application annexure P-2 dated July 1, 2016 which, as per counsel for the petitioner, was filed along with similar two other applications in FIR No. 332 and FIR No. 276. The said application is dated July 1, 2016 and is stated to be verbatim same as the two other applications filed in connected FIRs. A perusal of the orders annexures P-3 and P-4 shows that the petitioner had surrendered on July 1, 2016 in other two cases and was committed to judicial custody and was directed to be produced on July 4, 2016. On July 4, 2016, the petitioner was to be produced in the said two cases. The order which was passed on July 4, 2016 in FIR No. 279 indicates that file had been taken up by the Court on July 4, 2016 as surrender application had been moved on behalf of the petitioner and Janta Singh. When the petitioner was already in custody in two other cases and was in police custody, it is improbable that an application for surrender would be filed on July 4, 2016. A perusal of the order dated July 4, 2016 reflects that an application had been filed on July 4, 2016 for joining the petitioner in investigation by DSP Satya Pal Singh. The order dated July 4, 2016 also reflects that there was no occasion for the Court to take up the file on July 4, 2016 on its own for the first time on July 4, 2016. Had the petitioner moved an application for surrender on July 4, 2016, the Court should have issued notice to the investigating agency

regarding surrender but the wording of the order dated July 4, 2016 indicates that the application for bail and surrender had not been moved on July 4, 2016 but it was taken up on July 4, 2016. There does not appear to be any reason why the petitioner will not surrender in all the three cases on July 1, 2016 and would wait to surrender on July 4, 2016 in one case. There does not appear to be any reason for the petitioner to ante date the application for bail as July 1, 2016. A person may lie but the circumstances will not. I am constrained to believe that as a prudent person, the petitioner, who was wanted in three cases had surrendered simultaneously in all the three cases on July 1, 2016. 90 days expired on September 29, 2016. Challan was presented on October 1, 2016 as such the petitioner is entitled to be released on bail under Section 167 (2) Cr.P.C.

It is pertinent to observe here that the petitioner is involved in a large number of cases.

Without expression of any opinion on merits of the other cases, this petition is allowed. Petitioner is ordered to be released on bail under Section 167 (2) Cr.P.C. in case FIR No. 279 dated October 5, 2015, on his furnishing bail bonds/ surety bonds to the satisfaction of the trial Court.

January 9, 2017  
sanjay

(M.M.S.BEDI)  
JUDGE

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|-----------------------------|----------|
| Whether speaking/ reasoned: | Yes/ No. |
| Whether Reportable:         | Yes/No.  |